plaints of which the disciplinary authority was cognisant but did not regard as sufficiently serious to justify investigation by the committee of inquiry does not amount to any breach of the rules of natural justice.

Before their Lordships' Board the appellant relied upon *Kanda* v. *Government of Malaya.*[1] In their Lordships' view it does not support the appellant's contention. In that case the Commissioner of Police had received a report of a board of inquiry into the conduct of other police officers. This contained grave allegations against Mr. Kanda. It was this report that caused the commissioner to institute disciplinary proceedings against Mr. Kanda and to appoint a person to enquire into Mr. Kanda's conduct and to report to him. The report of this board of inquiry was supplied by the Commissioner of Police to the person conducting the inquiry into Mr. Kanda's own conduct. But it was never disclosed to Mr. Kanda. He had no opportunity, at the hearing of the inquiry into his own conduct, of dealing with the allegations against him which it contained. It is plain from the judgment that the breach of the rules of natural justice in that case consisted in making available to the person who conducted the inquiry these gravely damaging allegations. There would have been no breach if the Commissioner of Police had not done this, but had kept them to himself.

Their Lordships accordingly would also dismiss this appeal on the second ground relied upon by the appellant.

Their Lordships will report to the Head of Malaysia their opinion that this appeal should be dismissed and that the appellant should pay the respondents' costs.

Appeal dismissed.

Solicitors: *T. L. Wilson & Co.; Stephenson, Harwood & Tatham.*

SINGAPORE REPORT

TAN HIN CHOON & ORS. v. BAN HIN LEE BANK LTD.

[O.C.J. (Choor Singh J.) August 6, 1971]
[Singapore — Suit No. 2178 of 1965]

Land Laws — Conveyancing — Transfer of property — Intention of the parties to the conveyance — Absence of valuable consideration — Property conveyed as security — Overdraft facilities by bank — Legal mortgage — Mortgagor's right to redeem property.

Limitation — Redemption action — Conveyance — Mortgage — Limitation Ordinance, 1959, ss. 16, 18 and 27 — Extinguishment of mortgagor's right and title to the property.

The plaintiffs claimed a declaration that the property known as 801 Pasir Panjang Road, Singapore, which was registered in the name of the defendants, was held by them on trust for the plaintiffs absolutely. In the alternative, the plaintiffs claimed a declaration that notwithstanding the conveyance of the December 24, 1953, under which the said property was transferred to the defendants, the plaintiffs were entitled to redeem the said property upon payment to the defendants of the amount found due to them for principal and interest. The defendants maintained that the said conveyance was for valuable consideration and that the intent of the parties to the conveyance and the legal effect of it was to vest the property in the defendants free from any right or interest of the transferors. The defendants claimed that by virtue of the said conveyance. they became the absolute and sole beneficial owners of the said property.

Held, dismissing the claim: (1) the plaintiffs' claim to a declaration that the said property registered in the name of the defendants was held by them on trust for the plaintiffs absolutely was not supported by the evidence and they were not entitled to such a declaration;

(2) the conveyance of the December 24, 1953 under which the said property was transferred to the defendants was in fact a legal mortgage and the defendants were mortgagees in possession;

(3) the plaintiffs having failed to bring their claim to redeem the said property within 12 years of the execution of the conveyance of the December 24, 1953, were now precluded by virtue of the provisions of section 16 of the Limitation Ordinance, 1959 from bringing any such action:

(4) the expression "action to recover land" in section 18 of the Limitation Ordinance includes a redemption action. The plaintiffs having failed to bring their claim to redeem the property within 12 years as provided by section 16, their right and title to the property was extinguished by virtue of the provisions of section 18 of the Limitation Ordinance, 1959. Consequently their claim failed and must be dismissed with costs.

Case referred to:-

(1) *Cockburn* v. *Edwards* (1881) 18 Ch. D. 449.

CIVIL SUIT.

K. S. Chung for the plaintiffs.

C. H. Smith (*Y. R. Jumabhoy* and *R. Ramason* with him) for the defendant bank.

Cur. Adv. Vult.

Choor Singh J.: In this suit the plaintiffs claim a declaration that the property known as 801 Pasir Panjang Road, Singapore, which is now registered in the name of the defendants is held by them on trust for the plaintiffs absolutely. In the alternative, the plaintiffs claim a declaration that notwithstanding the conveyance of the 24th December, 1963 under which the property was transferred to the defendants, the plain-

tiffs are entitled to redeem the said property upon payment to the defendants of the amount found due to them for principal and interest.

Prior to the 24th December, 1953, the said property belonged to the first plaintiff, the second plaintiff and Tan Hin Pung now deceased (hereinafter called "the brothers") as tenants in common in equal shares but subject to an equitable mortgage in favour of the defendants as hereinafter appears.

The brothers were at all material times the only three directors of Eng Wah Manufacturing Company Limited. Tan Hin Pung died intestate on the 25th May, 1962, and the third plaintiff who is his lawful widow is the administratrix of the estate. On the 13th January, 1949, the three brothers deposited the title deeds of the property with the defendants as security for the overdraft facilities given by the bank to Eng Wah Manufacturing Co., Ltd. on its current account. The confirmation in writing dated the 13th January, 1949 of the deposit of title deeds is in Exhibit AB. 1. By this confirmation the brothers guaranteed the account of Eng Wah Manufacturing Co., Ltd. with the bank and as security for the guarantee they deposited the title deeds of the property with the bank thereby creating an equitable mortgage of the property in favour of the bank.

In November, 1953 the brothers were finding difficulty in making payment of the interest due on the overdraft. There was a discussion between the deceased brother Tan Hin Pung and Yeap Lean Seng, a director of the defendant bank which resulted in the execution of the conveyance of the 24th December, 1953 whereby the property was transferred to the defendant bank.

There is a dispute regarding the intention of the parties which led to the execution of the said conveyance. The plaintiffs say that it was agreed between the deceased and Yeap Lean Seng that the property should be conveyed to the bank to hold it in trust for the three brothers until such time when they had money to pay to the bank for the return of the property to them; that all legal expenses in connection with the conveyance were to be paid by the brothers; and that although the property was to be held by the bank until all sums due to the bank were paid, no interest was to be chargeable in the meantime notwithstanding the equitable mortgage. The defendants say that the said conveyance was for valuable consideration and that the intent of the parties to the conveyance and the legal effect of it was to vest the property in the defendants free from any right or interest of the transferors. The defendants deny that the said property was conveyed to them upon trust to hold it for the benefit of the brothers and they further deny that the said property was at any material time subject to any trust or to any term or condition either as alleged or at all. The defendants deny that they are the mortgagees of the said property and claim that by virtue of the said conveyance they became the absolute and sole beneficial owners of the said property. The defendants contend that the brothers having executed the said conveyance in which the transaction is described as a sale, the plaintiffs are now estopped from denying that the said statement in the conveyance is true and correct.

The plaintiffs called only one witness in support of their claim, one Wee Koh Yeow who was at the material time a senior clerk in the employ of the defendant bank. His evidence which is of paramount importance to the plaintiffs is set out in full. He stated: -

"I know Eng Wah Manufacturing Co., Ltd. of 9 Philip Street, Singapore. It was a customer of the bank. The three brothers, first and second plaintiffs, and Tan Hin Pung were directors of Eng Wah Manufacturing Co., Ltd. Some time after November 1953 they called me. I went to their office in Philip Street. I had a meeting with them in their office. I knew 801 Pasir Panjang Road was owned by the three brothers. I knew the property was mortgaged to the bank by way of deposit of title deeds. I can't remember when the deposit was made. I see AB.1. This letter was typed by me. The deposit was made as security for the loan to Eng Wah. I met the three brothers at 9 Philip Street some time in November 1953. Tan Hin Pung informed me that Eng Wah's financial position was in difficulty and that they could not pay the bank's over-draft. The amount due on 30th November 1953 was $202,693.26. He stated that for several months the company had not been making any money and was unable to pay the bank's overdraft. I told them, 'You have a property mortgaged to the bank. Why not sell it and pay the bank?' Tan Hin Pung said that it would not be enough to pay all the creditors of Eng Wah. He said that that was the only property left with them. They had another property next door to it but that had been sold. He asked me to find out whether Mr. Yeap Lean Seng could help them in this matter. Mr. Yeap was a director of our bank. He still is. I told Tan Hin Pung that as Yeap was his good friend, he should be able to do something for him. I suggested to them to approach Mr. Yeap and request him to hold the property on their behalf. The three brothers were running a sago factory under the name of Eng Wah Manufacturing Co., Ltd. at 801 Pasir Panjang Road. They had machinery there for manufacturing sago flour from raw sago imported from Indonesia. The next door property, 802 Pasir Panjang Road had been sold at $2 per sq. ft. in 1952 or 1953. In my opinion at $2 per sq. ft. 801 Pasir Panjang Road would have fetched $170,000. All of them agreed to my suggestion.

A few days later deceased came to my bank. My desk was about 10 feet from Mr. Yeap's desk. Deceased wished me and I asked him to see Mr. Yeap. He saw Mr. Yeap. What they discussed I could hear. After their discussion Yeap called me. I went up and stood beside them. Yeap told me that Mr. Tan wanted the bank to hold the property. No period was mentioned. Yeap said that Tan would like to preserve this property because Tan thought that property values would go up in the near future and he and his brothers would be able to make some money out of the property after paying all their debts. Yeap then asked me, 'Can we do such a thing?' I asked Yeap whether it would be a mortgage or a transfer. I told him that the bank was already holding the property as an equitable mortgage. Mr. Tan then said Yeap had agreed not to charge interest on the debit due by Eng Wah. I told Yeap that if there is not going to be paid any interest, it was no use making a legal mortgage because a mortgage carried interest. I said, 'Why not transfer the property to the bank?' I said this because Yeap had said that he was going to hold the property for the three brothers. Yeap then said, 'well, since there is no interest going to be charged, make a transfer to the bank.' I then told Mr. Tan that since Yeap had agreed to accept a transfer of the property to the bank, the three brothers should bear all the legal costs. Tan agreed. No period was mentioned as to how long the bank was going to hold the property but Mr. Tan gave an assurance that as soon as he was able to find money he would pay the bank immediately for the return of the property to the three brothers. Yeap agreed to this. Mr. Yeap asked me to take the title deeds to the bank's solicitors. I took the title deeds to Donaldson & Burkinshaw to make the transfer to the bank.

In Donaldson & Burkinshaw I saw Mr. Loh Peng Kwan. He asked me to see Mr. Parker or Mr. Thorne. I can't

remember which name he mentioned. I remember seeing Mr. Parker. I handed Mr. Parker the title deeds of 801 Pasir Panjang Road and told him to prepare a transfer of this property to the bank. I did not tell him the amount of the consideration to be inserted in the conveyance. This was in November. I did not tell Mr. Parker that the bank was holding an equitable mortgage on this property. I did not tell Mr. Parker about the arrangement between Mr. Yeap and Mr. Tan that the bank was going to hold this property. I did not tell Mr. Parker that the property would be transferred back to the three brothers when the bank's debt had been paid. It was a simple instruction to convey the property to the bank. There was to be no agreement for sale. He was specifically told not to prepare any agreement for sale. I told Mr. Parker that the matter was urgent. Did not tell him why it was urgent. I myself knew why the matter was urgent. It was to prevent other creditors seizing the property.

A few days before the conveyance was signed Mr. Tan Chin Chua, conveyancing clerk of Donaldson & Burkinshaw, rang me up and told me that the conveyance was ready and asked me the amount that was to be inserted in the conveyance as consideration. I in turn asked Mr. Yeap. He told me $150,000 was to be inserted as consideration. I relayed this to Mr. Tan Chin Chua. He told me to bring the three brothers to his office for signing the conveyance. I informed second plaintiff and on the 23rd December, 1953 I brought them to Donaldson & Burkinshaw. There I saw Mr. Tan Chin Chua and later we went into Mr. Parker's office. Mr. Parker asked me whether the bank had already paid the $150,000 to the three brothers or whether he would be receiving the amount. I told Mr. Parker that there was no consideration being passed and that it was left between the brothers and the bank. That is all that I said. Mr. Parker replied, "It is up to you" or words to that effect.

The conveyance was signed on the 23rd December, 1953. I told Mr. Parker to send both bills to the bank. The two bills were for $196.30 and $2,298. The bank paid these bills and debited Eng Wah."

The defendants rely entirely on Yeap Lean Seng's version of his discussion with Tan Hin Pung which led to the execution of the conveyance. Yeap's version was as follows: -

"Eng Wah Manufacturing Co., Ltd. was a customer of the bank. It had three directors, Tan Hin Pung, Tan Hin Choon and Tan Hin Yam. I knew Tan Hin Pung. I did not know the other two. These directors owned a property known as 801 Pasir Panjang Road. They deposited the title deeds of this property with the bank to secure the overdraft account of Eng Wah Manufacturing Co., Ltd. An acknowledgment of this deposit was given by the bank and it appears at AB.1. In November 1953 the overdraft account of Eng Wah Manufacturing Co., Ltd. was in the region of $202,693.20 I telephoned to Hin Pung and demanded payment from him. He promised to do so but failed. Later in November 1953 one Tong Moh Tim got in touch with me. He is a customer of the bank. He came to speak to me about the land owned by the company. He told me that the land owned by Eng Wah Manufacturing Co., Ltd. would be sold to the bank. He told me that it was Tan Hin Pung who asked him to come and tell this to me. I requested Mon Tim to ask Hin Pung to come and see me. When Hin Pung came, he told me that he had suffered a loss in business and was unable to repay the overdraft. No one else was present when this conversation took place. Both of us spoke in Hokkien. Hin Pung suggested to sell the property to the bank. He agreed that the property was worth $150,000. I mentioned this figure first and he agreed. After he agreed to this figure I called Wee Koh Yeow. Before I called him I did not notice him. I sent for him. When Wee came I told him that Hin Pung proposed to sell his property to the bank. I requested him to take the title deeds to our solicitors. I told him that the purchase price was $150,000. It is not true that I told Wee that Hin Pung wanted the bank to hold the property. Not true that I told Wee that Hin Pung wanted to preserve the property because property values would go up and then he and his brothers would make some money out of it after paying the bank's debt. I never told him this. I never asked Wee whether we could do such a thing. Wee did not ask me whether it would be a mortgage or a transfer. He did not say that the bank was already holding an equitable mortgage. It is not true that Hin Pung and I agreed that no interest would be charged on the debt due to the bank. It is not true that Wee told me that if no interest was to be paid it was no use making a legal mortgage because a legal morgage carried interest. Not true that it was Wee who then suggested, 'why not transfer the property to the bank?'. Not true that he made this suggestion because I had agreed that the bank would hold the property for the three brothers. Not true that I then said, 'Well, since there is no interest going to be charged, make a transfer to the bank.' I never said that. Not true that in my presence he told Hin Pung that since I had agreed to accept a transfer to the bank, the legal costs should be paid by the three brothers. It is true there was no mention of the period during which the bank was going to hold the property. Hin Pung did not say that he would pay the bank as soon as he got the money in order to get back the property. It is not true that I agreed to this suggestion. The land was already sold to the bank. I am 78 years old. I did not tell Wee anything about the account of Eng Wah Manufacturing Co., Ltd. The account of the company was to be credited with $150,000 which was the purchase price. Do not remember date of the conveyance. The bank took possession some time in February, 1954. The bank let out the property at $500 p.m. to Eng Lee Co. In Teochew it would be Young Lee Co. If Hin Pung had not suggested the sale, I would not have allowed the interest to accumulate indefinitely without taking any action. By action I mean the bank would have taken legal action to recover the amount due to the bank.

Some time at the end of 1961 a ledger clerk named Chia Chit Ping drew my attention to the account of Eng Wah Manufacturing Co., Ltd. in the bank's books. I do not read English. He showed me the account and told me that Eng Wah Manufacturing Co., Ltd. owed the bank over $200,000. I told him that that was not correct and that the company did not owe the bank such a large amount because they had sold the property to the bank. I told him that the account was not correct and asked him to do some checking. He did so and found the account to be incorrect. The sum of $150,000 had not been credited to the account. I gave instructions that the amount of $150,000 should be credited to the account. There was a debit balance of about $50,000 to $60,000. The account was closed in December, 1961. We did not take any action in respect of the debit balance. Between the period when the property was conveyed to the bank and December, 1961 I did not have any occasion to refer to the account of Eng Wah Manufacturing Co., Ltd. I now know that certain items were debited and some credited to the account of Eng Wah after the conveyance of the property to the bank. Legal costs were debited to the account of Eng Wah. The clerk was wrong in doing that — in making such an entry in Eng Wah's account. Yong Lee factory was insured. I do not know that the last payment of insurance premium is dated 21st February, 1961 and the account of Eng Wah is debited with that sum. I do not know that it happened. Property tax is debited to Eng Wah. The clerk was wrong in making such entries. Interest was charged and debited to 31st December, 1954. I did not check the account. The clerk was wrong. On 12th July, 1961 Eng Wah's account was credited with $3,000. This was the rent of the Pasir Panjang property. The rent was paid half yearly. It was a mistake of the clerk to credit rent to Eng Wah's account. On 4th March, 1955 there is an entry of $5,000 credited to Eng Wah. I have no idea of this item. On 12th December 1956 there is a sum of $3,000 credited to Eng Wah. This is payment of rent by Yong Lee Sago Factory to the bank and credited to Eng Wah's account. All these are mistakes by the clerk because in the first instance the amount of $150,000 was not credited to Eng Wah, therefore he went on crediting the account with the rents paid by Young Lee. The rent should have been debited to the rent account of the bank. I mean the rent should have been credited to the rent account of the bank. After the property was conveyed to the bank, the rent belonged to the bank. The total

amount credited to the account of Eng Wah in respect of rents received is $25,000.

I see Exhibit D.21. My signature appears on it in red. I do not read English — not at all. It is true that it was only a few days before the conveyance was executed that I told Wee that the purchase price was $150,000. After the conveyance was executed I did not see Hin Pung. It is not true that Hin Pung saw me in November, 1954. It is not true that after Hin Pung's death his widow came to the bank and saw Wee; that on her request Wee told me that the brothers wanted their property back and that I told Wee to ignore the matter. Not true that I again told him to ignore the matter when Wee received AB.8. I did not see AB.8. AB.8 was not shown to me. It was not explained to me. I did not how there was such a letter. I see Exhibits D.19 and D.19A. I did not authorise Wee to credit the account of Eng Wah with the amount of this cheque. I gave no such instructions. When the price of $150,000 was agreed I informed Wee about it. It was agreed on the day Hin Pung came to see me. I told Wee the purchase price and requested him to take the title deeds to the solicitors. That was the only occasion which I mentioned the price to Wee. Did not remind Wee about the price again"

The rest of the evidence in this case is entirely circumstantial but the defendants called one Tong Moh Tim (D. W. 3) to support Yeap Lean Seng's version of the discussion he had with Tan Hin Pung which led to the execution of the conveyance in question. Tong Moh Tim's evidence was as follows: —

"Towards the end of 1952 or early 1953 Tan Hin Pung approached me. He told me that he wanted to sell his property at Pasir Panjang. It was an oil mill at 801 Pasir Panjang. He asked me to find a buyer. I introduced the Namazie & Co. to him. I don't remember the number. It could have been 802 Pasir Panjang Road. I did not get any commission for introducing the purchaser.

In October or November, 1953 I went to Tan Hin Pung to collect some money which was due to me. He told me that he was not making any profit from his business: that the land was mortgaged to Ban Hin Lee Bank and that he was paying very high interest. He requested me to ask the Ban Hin Lee Bank if it was possible to transfer the land to the bank. I told him that I would try and find out. He meant that he wanted to sell the land to the bank.

I saw Mr. Yeap Lean Seng (D.W. 1) of Ban Hin Lee Bank. I told him that Tan Hin Pung wanted to sell the land to the bank. Yeap Lean Seng agreed. I told Hin Pung that Yeap had agreed to buy the land and requested him to get in touch with Mr. Yeap. I am quite sure in my mind that Hin Pung had offered to sell and Yeap had agreed to buy. The purchase price was not mentioned to me either by Hin Pung or by Yeap. After that they got in touch with each other. "Some time later I rented the sago factory at 801 Pasir Panjang Road, I rented it from the Ban Hin Lee Bank. Originally the rent was $500 p.m. A few years later I paid $600 p.m. I first rented it some time in February or March 1954. I paid the rent by cheque, sometimes every six months and sometimes once a year. I made out a cheque in favour of the Ban Hin Lee Bank Ltd.

I see Exhibit D.17A. It is one of my cheques. It bears my signature. It was for rent of the factory for ten months. It came to $5,000/-.

I see Exhibits D.19A, D.20A, D.21A, D.11A, D.22A. D.23A and D.16A. They are cheques signed by me and were for payment of the rent of the factory.

After I took over the factory on rent, I employed Hin Pung in the factory on a salary of $300 p.m. He worked for me for 7 or 8 years — may be only 6 or 7 years. He worked for me right up to his death. Throughout the time he was working for me he never mentioned that the factory was mortgaged to the bank. Never said that he would one day get the factory back....."

The rest of the evidence on which the plaintiffs rely is entirely circumstantial. The plaintiffs say that the following circumstances show clearly that after the execution of the conveyance of the 24th December, 1953, under which the property was transferred to the defendants, the defendants continued to treat the mortgage of the property as subsisting and gave full effect thereto: -

(a) the charging of interest against Eng Wah Manufacturing Co., Ltd. The defendants' account books show that although the property had been transferred to the defendants on the 23rd December, 1953, the defendants continued thereafter to debit interest every month on the full amount of the overdraft in the account of Eng Wah Manufacturing Co., Ltd. up to October, 1954. The amount of the interest debited from December, 1953 to October, 1954 totals $21,645.96. In November, 1954 it was pointed out to the defendants that the charging of interest was contrary to the agreement and the defendants immediately stopped charging interest. This is borne out by the defendants' books;

(b) the failure to credit the account of Eng Wah Manufacturing Co., Ltd. with the sum of $150,000 which is alleged to be the consideration for the transfer of the property. The defendants' books show that the account of the company was not credited with the sum of $150,000 until the 29th December, 1961 i.e. eight years after the execution of the conveyance;

(c) the debiting of the company's account with the legal costs of the vendors and purchasers charged by the defendants' solicitors Messrs. Donaldson & Burkinshaw's two bills totalling $2,494.80 were paid by the defendants and this amount was debited in the account of Eng Wah Manufacturing Co., Ltd.;

(d) the debiting of the account of Eng Wah Manufacturing Co., Ltd. with the amounts of the insurance premiums paid by the defendants in respect of fire insurance on the property. Although the property had been transferred to the defendants they debited the account of the company with the insurance premium paid every year. The account books of the defendants show that from 19th February, 1954 to 21st February, 1961, the account of the company was debited with insurance premiums totalling $3,844/-.;

(e) the debiting of the company's account with the assessment payable on the property. Although the property had been transferred to the defendants, they debited the account of the company with the amount of the assessment paid every year. The defendants' account books show that the account of Eng Wah Manufacturing Co., Ltd. was between the 7th February, 1957 and 31st July, 1961 debited with the total sum of $4,656.50 being assessment paid by the bank during that period;

(f) the crediting of the account of the company with payments totalling $25,000. The account books of the defendants show that between the 4th of March, 1955 and the 12th of July, 1961, the account of Eng Wah Manufacturing Co., Ltd. was credited with various sums totalling $25,000 which the plaintiffs claim were payments to account of the overdraft secured by the mortgage; and

(g) permitting Eng Wah Manufacturing Co., Ltd. after the execution of the conveyance to grant a tenancy of the property to Yong Lee & Co., Ltd. in February, 1954.

The plaintiffs also rely on four letters which the widow of Tan Hin Pung wrote to the defendants and to which she received no reply. The first letter was written on 12th June, 1964 and was as follows: -

"Madam Chong Swee Eng,
35 East Coast Avenue,
Singapore, 15.
12th June, 1964.

The Director,
Mr. Yeap Lean Seng,
Ban Hin Lee Bank Ltd.,
52A Circular Road,
Singapore, 1.

Dear Sir,

Re: Eng Wah Manufacturing Co., Ltd. and the late Tan Hin Pung, dec.

I am pleased to inform you that I am now able to fulfil my late husband's ambition to repay you the debt due to you by Eng Wah Manufacturing Co., Ltd. and thereby redeeming the property No. 801 Pasir Panjang Road which was duly transferred to your Bank in order to protect my late husband's interests.

Kindly let me hear from you that you have no objection in transferring the above property to myself and my late husband's two brothers Mr. Tan Hin Choon and Mr. Tan Hin Yam.

Thanking you in anticipation.

Yours faithfully,
Sgd. CHONG SWEE ENG,
(widow of Tan Hin Pung, decd.)."

On the 6th July, 1964 the deceased's widow wrote a reminder enclosing a copy of her letter of 12th June and asked for a reply. On the 14th September she wrote a long pleading letter on the same subject and offered to pay the amount due to the bank in return for the property. On the 22nd October she wrote another letter to the same effect. Finally, receiving no reply from the bank to all her letters, she wrote on the 11th November, 1964 to Wee Koh Yeow as follows: -

Dear Mr. Koh Yeow,

I wish to inform you that I had written several letters to your boss Mr. Yeap Lean Seng without any success of having received any reply.

The letters I had written relates to the property known as No. 801 Pasir Panjang Road, Singapore, which was mortgaged to your Bank as security for the overdraft to your Bank as security for the overdraft of Eng Wah Manufacturing Co., Ltd. and subsequently transferred to the Bank by my late husband and his two brothers on an understanding with your Boss who agreed to return this property if and when my husband is able to pay off the amount at that time due by the abovenamed firm to your Boss without interest.

You know that my husband did make some payments and I am depending on you to asist me in clarifying this with your Boss.

Will you be kind enough to do the needful.

Many thanks.

Yours sincerely, "

There is one other matter on which the plaintiffs rely. It is an allegation by Wee Koh Yeow that the defendants' solicitor, Mr. Ramason, offered him a large sum of money if he would give evidence favourable to the defendants. Wee's evidence regarding this allegation was as follows: -

"...The first offer was I think in December, 1968 when he asked me to have lunch with him at Prince Restaurant. We had lunch there. No. I am mistaken here. It was when he asked me to go to his office in the afternoon. I went to his office at 4 p.m. Don't remember the date. There I waited until he was free and when he was free he brought me to Prince Restaurant. There Mr. Ramason ordered beer. He told me that he was happy to say that the bank was willing to pay me $25,000 if I gave evidence favourable to the bank and also at the same time to recommend me to be an officer of the bank *i.e.* he would recommend me to be an officer of the bank as I had given the bank's work to him. I told him that it was very hard on me because the evidence was there. What was I to do if I was charged for perjury for giving false evidence? I told him that I could be sent to jail. He told me to think it over. Before this I had already given a statement to the plaintiff's solicitors. The statement was made to Mr. Richard Laycock. He was then in Mr. Chung's office. I told him I would think it over but it was very hard for me to give such evidence. We then left. The second offer was made in February, 1969. He telephoned me and asked me to meet him at the Singapore Cricket Club to have lunch with him there. I went to the S.C.C. and found that he had not arrived there yet. Later he arrived. He ordered lunch. During the lunch he told me that the bank was willing to give me $50,000 for giving evidence favourable to the bank. I told him that the evidence was there and what could I do. I could not go and tell a different story. And if I gave evidence in court which was different from the truth I could be charged in court and I could be sentenced to imprisonment. He asked me to think it over and said that it was not a small sum of money. He said he would like to see me get on in life as I was being paid only $590 p.m. as a clerk. I thanked him for considering my welfare and he sent me back to my office in a taxi. In the taxi he told me again to think over the matter.

The third offer was at the beginning of May, 1969. He telephoned me and asked me to meet him at the S.C.C. I went to the S.C.C. but he was not there. He came later. He had a chat with another solicitor and then he came over to where I was. He told me that the bank was willing to go up to $100,000 if I would give evidence favourable to the bank. I was indeed much surprised. He told me that I could not get such an amount in my life time. I was very touched and told me, 'What can I do? I am happy the bank has considered offering such a large sum of money but I could not go to court and give a different version because I would be charged with perjury.' I was told at the first meeting that the offers were in strict confidence. All the offers were in strict confidence. The first person I told about these offers was Mr. Jack Tan and I told him on last Thursday, 12th March. The plaintiffs came to know later. I did not tell earlier because I was still in the employ of the bank and the offers were made in strict confidence. I was afraid if I revealed the offers I would be dismissed.

At the time the third offer was made I knew the case would be heard on 26th May because I had received a subpoena. A few days after the last offer I was in my office at the bank when Mr. Yeap Teik Leong the asst. manager called for me. He told me that the bank was willing to offer me $100,000 if I would give evidence favourable to the bank. I told him that the evidence was there. What could I do? He said that if I accepted $100,000 the bank's solicitor would advise me on three points and on these three points the bank would win the case. I told him that the evidence was there and it was no use for me knowing three points. I did not find out what the three points were. I told him that if anything should go wrong I could be charged with perjury. I asked him, 'Why not settle the matter?' He replied, 'Why don't you ask the plaintiffs to accept 50-50?' By this he meant that the property should be sold and out of the proceeds the bank should be paid what was due to it and the balance was to be shared equally between the plaintiffs and the bank. He asked me to see the plaintiffs about this. I told him that I would see the plaintiffs and I did see the plaintiffs about it. They accepted this proposal. The plaintiffs said that they were accepting the offer out of consideration for me because if the case went on I may be in trouble with the bank."

Mr. Ramason who gave evidence on oath and stated as follows: -

"..I was present in court when allegations of my conduct were made by P.W. 1 There is no truth in any of these allegations.

I never went to Prince Restaurant with P.W.1. Nor had I any conversation with him in December, 1968. No such conversation took place and no such offer was ever made. It is not true that I made a second offer to him at the Singa-

pore Cricket Club. I have been to the Singapore Cricket Club with P.W.1 in March, 1969. I think it was on 7.3.69. I had a matter in this court in which I was acting for Ban Hin Lee Bank. This matter required some assistance from a member of the bank. It is Originating Summons No. 38 of 1969. P.W.1 came to my office in the morning at about 10.15 a.m. on 7.3.69 and accompanied me to the High Court. He was in the High Court until the application was heard. After the application I told him the result of the application. When we came downstairs I told him that I was going to the Singapore Cricket Club for coffee and asked him whether he would have a coffee with me. He accompanied me to the Singapore Cricket Club where we had coffee. After coffee he left. I returned to my office. We did not have lunch.

It is not true that I offered him $100,000. I never did that at any time. It is a very serious allegation.

I practise in the criminal courts and I know that perjury is a very serious offence.

I never had any conversation of the kind he has narrated in this court. After that occasion I have never been to the Singapore Cricket Club with P.W.I. That was the first and only time I have been with him to the Singapore Cricket Club. It is not true that in May, 1961 I jacked up the offer to $100,000. I never met him again at the Singapore Cricket Club. I never had any conversation with him at the Singapore Cricket Club. I never offered him $100,000 as a bribe.

P.W.1 has been to my house at Oei Tiong Ham Park. In 1968 in October on a Deepavali Day he came to my house. He said that he was visiting somebody else in Oei Tiong Ham Park and he dropped in. I was at that time entertaining guests. I had no conversation with him relating to this suit. I am positive it was never in November or December, 1968 that he visited my house.

He came to my office one day in May last year — 1969 — I was not in when he came. After I returned from the magistrates' courts I found him seated in the office. He told me, 'I have sleepless nights Mr. Ramason, settle this suit.' He said that Mr. Chung was waiting at his office and the two plaintiffs were also in Mr. Chung's office. He said. 'Come along.' I asked P.W.1 to ring up the office of Mr. Chung and find out if in fact he was in his office. My telephone operator told me that Mr. Chung was in the office So I went with P.W.1 in a taxi to Mr. Chung's office. When I arrived at Mr. Chung's office there was a discussion with Mr. Chung but nothing materialised and I came away leaving P.W.1 behind.

On 26.5.69 before the trial commenced in this court there was some discussion in the well of this court but again nothing materialised. To begin with we often have people who don't distinguish between solicitor and client. On the instructions of the bank I terminated his services under the Employment Act. After that on the instructions of the bank I sued him and six others in Suit No. 2290 of 1968. The suit was commenced before his dismissal. I obtained judgment in that suit on 30th October, 1969. I followed it up with a bankruptcy notice against him but it has not been served up to today and has lapsed. I also commenced suit No. 1742 of 1969 against him and seven others on 13.8.69 in which P.W.1 is one of the defendants. Two attempts were made to serve P.W.1 with the writ but without success. I managed to serve this writ on P.W.1 this afternoon. He knows about this suit because one of the brothers is a defendant in this suit and he has been served.

Ban Hin Lee Bank Ltd. has never asked me to bribe P.W.1. If they had asked I would have scolded them and told them the seriousness of doing such a thing. I have not had the time to instruct my solicitors but I will certainly do so at the conclusion of this trial."

I shall first deal with this allegation of the offer of a bribe by the defendants. Wee stated that the offer was made to him by the defendants' solicitor on three different occasions. Wee said that he mentioned perjury; that he told Mr. Ramason on every occasion that the evidence was there and that he was told to think it over. The story is the same on all three occasions. No dates are given. The allegation is strenuously denied and not only by Mr. Ramason but also by Yeap Lean Seng and his son Yeap Teik Leong. If the defendants were minded to bribe Wee there was nothing to prevent them from doing so on their own, for after all he was their employee and they knew him well. All they had to do was to discuss the matter directly with him in the privacy of their own office. There was no necessity to bring in a third party. It is difficult to believe that a bank intending to bribe its own employee would request its solicitor to make the offer of a bribe on its behalf. Another feature of this allegation is this: after Mr. Ramason had offered a bribe of $25,000 and Wee had expressed reluctance in accepting it Mr. Ramason is alleged to have told Wee "to think over the matter". And yet the next time they meet the offer is increased to $50,000 although Wee had not yet given a firm refusal to the offer of $25,000. This process is repeated again at the third meeting when Mr. Ramason is alleged to have increased the offer to $100,000 without having received a firm refusal of the offer of $50,000 made at the previous meeting. In my opinion Wee has fabricated this allegation of a bribe in order to embellish his story and strengthen the plaintiffs' case. He wants the court to believe that the defendants' case was so weak that they were endeavouring to get him over to their side by offering him a large sum of money. Further, Wee appeared to me to be that type of a person who would have accepted the offer of $100,000 if such an offer had in fact been made to him. The allegation is a very serious one and I do not believe a word of it. I have no hesitation in rejecting this allegation because I am convinced that it is completely untrue.

I find that the plaintiffs' claim to a "declaration that the property now registered in the name of the defendants is held by them on trust for the plaintiffs absolutely" is not supported by the evidence. In paragraph 2 of their amended statement of claim they admit that "on the 24th day of December, 1953 the property was conveyed by the brothers to the defendants upon terms that they should stand possessed of the same upon trust for the brothers and convey the same to the brothers on request subject to payment to the defendants of all sums due to them on conveyance." The amount due to the defendants on the day the conveyance was executed was $203,693.20. The plaintiffs' own witness Wee testified that the arrangement between Yeap Lean Seng and Tan Hin Pung was that the property should be conveyed to the bank and that as soon as the brothers could find the money then due to the bank, the property would be re-conveyed to them by the bank upon payment of the amount due to the bank. And Tan Hin Pung's widow says the same thing in the four letters that she wrote to Yeap Lean Seng. In the light of the evidence, led by the plaintiffs, which indicates that the property was to be held by the bank as security for the repayment to the bank of $203,693.20, I do not see how the plaintiffs can claim a declaration "that the property is held by the defendants on trust for the plaintiffs absolutely." The plaintiffs are clearly not entitled to such a declaration.

The crucial question in this case is whether the conveyance executed by the brothers on the 23rd

December, 1953 and dated the 24th December, 1953, under which the property was transferred to the defendants, was a legal mortgage as claimed by the plaintiffs or a sale as claimed by the defendants.

The defendants say that the plaintiffs' claim that the conveyance was in fact a legal mortgage is based entirely on the mistakes made by the bank; that the bank made a mistake in not crediting the account of Eng Wah Manufacturing Co., Ltd. with $150,000 on the signing of the conveyance; that this mistake led to a chain reaction of other mistakes; and that apart from these mistakes which appear in the bank's books the plaintiffs have nothing else to rely on. The defendants claim that the transaction which led to the execution of the conveyance was in fact a sale as stated in the conveyance.

If the transaction was in fact a sale, it is relevant to consider what was the consideration for the sale of the property to the defendants. Yeap Lean Seng's evidence is that in the course of his discussions with Tan Hin Pung the sale price was agreed at $150,000; that on the same day he gave instructions to Wee to take the title deeds to the bank's solicitors and instruct them to prepare the conveyance; and that at the same time he told Wee that the consideration to be inserted in the conveyance was $150,000. Wee denied this. His evidence is that Yeap Lean Seng did not tell him on that day the amount of the consideration to be inserted in the conveyance; that a few days before the conveyance was signed, he was told by Yeap Lean Seng to insert the figure of $150,000 in the conveyance as the consideration for the transfer of the property and that accordingly he informed Mr. Parker's clerk Tan Chin Chua that the consideration was $150,000. The conveyance was executed before Mr. Parker and his evidence is that when Wee handed over the title deeds to him and gave instructions for the preparation of the conveyance, Wee did not tell him the amount of the consideration to be inserted in the conveyance. Mr. Parker stated that there was a note in his file to the effect that they would be told the purchase price in a day or two. The evidence of Tan Chin Chua is that when Wee came with the title deeds and gave instructions for the preparation of the conveyance, Wee told him that he would let him know later the consideration to be inserted in the conveyance and that some time on the 21st December, 1953 Wee told him the consideration was $150,000.

Wee's evidence that Yeap Lean Seng did not tell him the consideration to be inserted in the conveyance when Yeap instructed him to take the title deeds to the bank's solicitors appears to be supported by the evidence of Mr. Parker and of his clerk Tan Chin Chua because if on that occasion Yeap had in fact told Wee the amount of the consideration Wee would in turn have told Mr. Parker straightaway the consideration to be inserted in the conveyance. In my opinion Yeap Lean Seng was not speaking the truth when he said that the sale price was agreed between him and Tan Hin Pun at $150,000 when they agreed that the property be conveyed to the bank. If a sale price had in fact been agreed upon, Yeap would undoubtedly have informed Wee then and there what the sale price was as it had to be inserted in the conveyance. In my opinion all this evidence supports Wee's allegation that when Tan Hin Pung met Yeap Lean Seng and discussed this matter, Tan Hin Pung did not agree to sell the property to the defendants and consequently no sale price was agreed between them on that day.

The plaintiffs' contention that Tan Hin Pung never agreed to sell the property to the defendants appears to be further supported by the fact that upon the execution of the conveyance no consideration passed from the purchasers to the vendors. Mr. Parker's evidence is that no consideration passed through his hands and the defendants admit this. They also admit that in fact nothing was paid by them direct to the vendors. Where then is the consideration for the sale of the property to the defendants? It is submitted on behalf of the defendants that the consideration was a sum of $150,000 which was applied in reduction of the overdraft account of Eng Wah Manufacturing Co., Ltd. which was guaranteed by the brothers, the vendors of the property. This submission is not supported by the evidence in the defendants' account books. Although the conveyance was signed on the 23rd December, 1953 the sum of $150,000 was not credited to the account of Eng Wah Manufacturing Co., Ltd. until the 29th December, 1961, that is eight years after.

It is submitted on behalf of the defendants that the failure to credit Eng Wah's account with $150,000 upon the signing of the conveyance was a mistake; that the mistake was not discovered until the 29th December, 1961 and that upon the discovery of the mistake, the matter was immediately put right by crediting Eng Wah's account with $150,000. This submission is also not supported by the evidence. If indeed it was a mistake not to have credited Eng Wah's account with $150,000 in December, 1953, then upon discovery of the mistake one would expect the rectification of not only of this mistake but also of all the other consequential mistakes. All the other mistakes, and there were several, were not rectified. For example, there were credit items totalling $25,000 which the defendants claim were wrongly credited in Eng Wah's account. They claim that this sum of $25,000 in fact belonged to the defendants. Why was this sum, on discovery of the mistake, not debited to Eng Wah's account? Was the bank being so generous as to forgo this large sum wrongly paid into the account of Eng Wah? The failure to debit this sum and to credit other items alleged to be wrongly debited in Eng Wah's account is incomprehensible conduct on the part of a bank which claims that the crediting of $150,000 on 29th December, 1961 was a rectification of a mistake, namely, the omission to credit that sum in December, 1953.

Yeap Lean Seng's explanation is that the entries in Eng Wah's account were not adjusted because it was a dead account and he had decided to close the account and write off the balance of the overdraft as a bad debt. It is not understood how the account could be regarded as dead when entries were being made in this account right up to December, 1961. Furthermore, the decision to close this account and write off the balance of the overdraft was not commu-

nicated to the brothers. This is admitted by the defendants but they are unable to explain why the brothers were not informed of this decision. The account of Eng Wah Manufacturing Co., Ltd., after a credit of $150,000 was still in debit to the extent of over $50,000 the repayment of which was guaranteed by the brothers. Why was this sum of over $50,000 written off? I find it difficult to accept the explanation given by Yeap Lean Seng. The defendants have no valid explanation for writing off this large sum of money. And they have no explanation at all for not informing the brothers that their liability in respect of the overdraft account of Eng Wah Manufacturing Co., Ltd. had ceased because the amount due by Eng Wah Manufacturing Co., Ltd. had been written off.

The defendants have pleaded that the valuable consideration for the execution of the conveyance by the brothers was the release by the defendants of the indebtedness of Eng Wah Manufacturing Co., Ltd. to the defendants and the release by the defendants of the guarantee given by the brothers in respect of the said indebtedness of Eng Wah Manufacturing Co., Ltd. The defendants were pressed by the plaintiffs to state the mode of the said release and the defendants' answer is as follows: -

"The release by the defendants of the indebtedness of Eng Wah Manufacturing Co., Ltd. consisted of an entry in the defendants' books of account to the effect that such indebtedness was ended. The said entry also served to release the liability of the first and second plaintiffs and the said Tan Hin Pung under their said guarantee."

When pressed further to state the date, amount and manner of the said entry, the defendants pleaded: -

"(a) the entry in the defendants' books of account regarding the release by the defendants was made on the 29th December, 1961; and

(b) the amount and the manner of the entry was a credit being given of the sum of $150,000."

It is clear from these admissions by the defendants that they took a conveyance of the property from the brothers without giving any consideration for the transfer of the property to them. They held on to the conveyance for eight years without giving any consideration and then one fine day they made a book entry in Eng Wah's account without the knowledge and consent of the brothers and without any intimation to them and thereupon they took for granted that the said book entry was valuable consideration for the transfer of the property to them and considered themselves the rightful owners of the property.

In my opinion the evidence outlined above supports the plaintiffs' contention that on the 29th December, 1961 Yeap Lean Seng decided to repudiate the agreement with the brothers; that he decided to take over the property for the bank; that he therefore thought that he would pay the consideration of $150,000 mentioned in the conveyance by crediting Eng Wah's account with that sum of money; that having done that Yeap Lean Seng considered the property would be the bank's since it had been paid for; and that Yeap Lean Seng then closed Eng Wah's account so that there would be no further credits and debits and therefore no further evidence of the mortgage debt.

There is further support for the plaintiffs' contention that the conveyance was in fact a legal mortgage. The defendants' account books show that after the execution of the conveyance the defendants continued to debit the account of Eng Wah Manufacturing Co., Ltd. with interest on the full amount of the overdraft up to the month of October, 1954. Interest was debited from December, 1953 to October, 1954 totalling $21,645.96 and thereafter no interest was charged although the amount of the overdraft stood at well over $200,000. Now, what is the explanation for this most unusual state of affairs? Wee Koh Yeow stated that it was agreed between Yeap Lean Seng and Tan Hin Pung that although the property was to be held by the bank until all sums due to the bank were repaid, no interest was to be chargeable in the mean time notwithstanding the mortgage; that in November, 1953 Tan Hin Pung saw him and complained that interest was being charged contrary to the agreement with Yeap Lean Seng; that he advised Tan Hin Pung to see Mr. Yeap Lean Seng; that Tan Hin Pung saw Yeap Lean Seng whereupon Yeap instructed him (Wee) to inform the ledger clerk to stop charging interest; that he accordingly informed the ledger clerk in charge of Eng Wah's account that interest was not to be charged; and that the charging of interest was therefore stopped after October, 1954. The defendants have no explanation at all as to why they stopped charging interest after October, 1954. Yeap Lean Seng denied that Tan Hin Pung saw him in November, 1954 but he could not explain why interest was stopped. When asked why the charging of interest suddenly stopped after October, 1954 he replied, "I do not understand who was responsible for stopping the charging of interest." He agreed that only he or his son Yeap Teik Leong could give instructions for stopping interest and yet no satisfactory explanation was forthcoming from either of them. In the absence of any explanation from the defendants, the explanation given by Wee Koh Yeow must be accepted. Further, there could be one and only one reason for the total stoppage of interest and that is that there was an agreement not to charge interest. If there was no such agreement and assuming that the conveyance was a sale, one would expect interest to run on the balance of the overdraft after credit had been given for $150,000, the purchase price mentioned in the conveyance. Again, if someone in the bank discovered in November, 1954 that the brothers had sold their property to the bank and therefore they must not be charged interest, one would expect the sum of $150,000 to have been credited to the account of Eng Wah in November, 1954 and interest charged on the balance of the overdraft. There could never be a total stoppage of interest save and except on the basis already pointed out, namely, by virtue of an agreement not to charge interest. Such an agreement supports the plaintiffs' claim that the conveyance was in fact a legal mortgage.

The evidence shows that payment was made to the bank by eight cheques all stamped "not negotiable" by a customer and which were further stamped "for the credit of Ban Hin Lee Bank Ltd. only" by the bank and yet all these eight cheques were paid into the account of Eng Wah Manufacturing Co., Ltd. This

could only have been done with the express authority of some responsible officer of the bank. The plaintiffs say that these eight cheques which total $25,000 were given to Tan Hin Pung by his employer in payment of bonus due to him and Tan Hin Pung gave them to the defendants in reduction of the overdraft account of Eng Wah Manufacturing Co., Ltd. The defendants say that they were payments in respect of rent due by the tenant of the property which is the subject matter of this action and that the cheques should have been paid into the rent account of the bank but were instead wrongly paid into the account of Eng Wah Manufacturing Co., Ltd. In my opinion it is more probable than not that the eight cheques in question were for rent payable by the tenant of the property as they were drawn by the tenant in favour of the defendants who were the registered owners of the property. There is support for this view in the evidence of Tong Moh Tim. He is the person who signed the cheques and his evidence is that they were given for rent due to the defendants.

The explanation of the defendants for debiting the account of the Eng Wah Manufacturing Co., Ltd. with the legal costs of the defendants' solicitors, with the insurance premiums paid in respect of the property and with the amount of the assessment paid on the property is that that was all done by mistake but they have no explanation at all as to why the letters written by Tan Hin Pung's widow, the third plaintiff were not answered by the defendants. All these letters claim the right to redeem a very valuable property from the bank. All the letters were addressed to Yeap Lean Seng the director who knew the real truth about this matter. If the bank had nothing to hide, one would expect an instant denial of the right to redeem which is claimed in these letters. Yeap Lean Seng's explanations for not replying to the letters was that he did not think it necessary to do so and secondly that he did not know who the writer of the letter was. I am not at all impressed with this explanation coming from a banker of 30 years standing.

In my opinion all the documentary evidence points to the conveyance of the 24th December, 1953 as being a legal mortgage. The evidence of Tong Moh Tim and Chia Chit Ping is of no avail to the defendants. Tong Moh Tim was not present at the meeting between Tan Hin Pung and Yeap Lean Seng which led to the signing of the conveyance and he therefore does not know what transpired at that meeting. As for Chia Chit Ping, he is an employee of the defendants and it appears to me that he has been brought to court merely to lend support to Yeap Lean Seng's version of the transaction. In my opinion, apart from the evidence of Wee Koh Yeow, the circumstantial evidence in this case, in particular the evidence in the defendants' account books and the conduct of the defendants, first in December, 1961 in not informing the brothers of the release of their guarantee and again in 1964 in not replying to the letters written by Tan Hin Pung's widow, completely outweighs Yeap Lean Seng's evidence. Accordingly, I have no hesitation in holding that the conveyance of the 24th December, 1953 was a legal mortgage of the property in question and not an outright sale as claimed by the defendants.

The defendants have pleaded that "if there was such a mortgage (which the defendants deny) then any claim to redeem the alleged mortgaged property is time barred by virtue of section 16 of the Limitation Ordinance, 1959". Section 16 reads as follows: -

"When a mortgagee of land has been in possession of any of the mortgaged land for a period of twelve years, no action to redeem the land of which the mortgagee has been so in possession shall thereafter be brought by the mortgagor or any person claiming through him:

Provided that where a mortgagee is by virtue of the mortgage in possession of any mortgaged land and either receives any sum in respect of the principal or interest of the mortgage debt or acknowledges in accordance with the provisions of section 27 of this Ordinance the title of the mortgagor, or his equity of redemption, an action to redeem the land in his possession may be brought at any time before the expiration of twelve years from the date of the payment or acknowledgment."

The defendants also rely on section 18 which reads as follows: -

"Subject to the provisions of section 12 of this Ordinance at the determination of the period limited by this Ordinance to any person for bringing an action to recover land the right and title of such person to the land for the recovery whereof such action might have been brought within such period shall be extinguished."

The provisions in section 16 relating to acknowledgment are explained in section 27 which provides as follows: -

"27. — (1) Every such acknowledgment as is referred to in section 26 or in the proviso to section 16 of this Ordinance shall be in writing and signed by the person making the acknowledgment.

(2) Any such acknowledgment or payment as is referred to in section 26 or the proviso to section 16 of this Ordinance may be made by the agent of the person by whom it is required to be made under that section, and shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is being made."

The plaintiffs issued their writ on the 18th December, 1965. The conveyance in question is dated the 24th December, 1953. The writ therefore appears to have been issued within time. The claim in the writ is for "a declaration that the property now registered in the name of the defendant is held by them on trust for the plaintiffs absolutely." It was not until the 29th May, 1969 that counsel for the plaintiffs applied to amend the plaintiffs' statement of claim to include the alternative claim that the said conveyance was a legal mortgage. The amendment was agreed to by the defendants on the express condition that such amendment was not to prejudice the rights of the defendants under the Limitation Ordinance then existing. This was accepted by counsel for the plaintiffs. Both parties accepted the effective date of the amendment to be the 29th May, 1969. Under the circumstances the plaintiffs' claim that the conveyance is a legal mortgage would appear to be out of time, as it was made well over 12 years after the execution of the conveyance of the 24th December, 1953.

The plaintiffs contend that the defendants are not entitled to rely on section 16 of the Limitation Ordinance for a number of reasons.

First, it is alleged that Tan Hin Pung made payments on various dates totalling $25,000 in respect

of the principal of the mortgage debt due to the defendants. I have already dealt with this matter and held that the payments totalling $25,000 were made by the tenant of the property in respect of rent due to the defendants. The receipt of rent by a mortgagee is not a payment by the mortgagor or by anyone on his behalf. The mortgagee receives rents which are his own, subject to the right of redemption. See *Cockburn* v. *Edwards*,[1] where Jessel M.R. said, at page 457: -

"The mortgagee receives rents which are his own, subject, of course, to the right of redemption; he is not receiving interest or principal, but receiving the rents of the property which belongs to him subject to the right of the mortgagor to redeem it."

Secondly, it is contended that the payment every year of assessment on the property by the defendants on behalf of the brothers and the subsequent debiting of the amounts in the account of the company "constituted an acknowledgment in writing of the mortgagors' title and/or their equity of redemption." I have no doubt at all that such payments and their subsequent entry in the defendants' books does not constitute an acknowledgment within the meaning of sections 16 and 27 of the Limitation Ordinance. And the same applies to the payment of fire insurance premiums by the defendants. The payment of the premiums every year and their subsequent entry in the account books of the defendants do not constitute an aoknowledgment within the meaning of sections 16 and 27 of the Limitation Ordinance.

The plaintiffs' next contention is that the crediting of the company's account with $150,000 on the 29th December, 1961 was a payment towards reduction of the principal of the mortgage. The truth of the matter is that the brothers did not pay a cent. This was merely a book entry. Consequently it does not assist the plaintiffs in any way.

It is next contended that "the defendants by their solicitor or agent, Mr. Ramason, on the 12th November, 1966, 18th November, 1966 and 14th December, 1966 acknowledged in writing, signed by the said solicitor or agent, the title of the brothers as mortgagors of the property and/or their equity of redemption." Such acknowledgment, if at all it was an acknowledgment within the meaning of sections 16 and 27 of the Limitation Ordinance, was made well after all the right, title and interest of the plaintiffs in the property had been extinguished and is of no avail to the plaintiffs.

Lastly, it is contended that the defendants are not mortgagees in possession. The plaintiffs never led any evidence to the effect that they were in possession and were collecting the rents of the property. In fact none of the plaintiffs gave evidence and counsel for the defendants made much of this fact. If the plaintiffs have been in possession of the property and collecting its rents they should have no difficulty in proving it. On the evidence it is quite clear that the defendants have been in possession of the property and collecting its rents ever since the conveyance was executed and were accordingly mortgagees in possession from the date of the conveyance.

It has often been held that a mortgagee is not a trustee for the mortgagor so as to prevent time running in the mortgagee's favour. And once the title of a mortgagor is barred he and those claiming through him lose all interest in the land. Section 18 of the Limitation Ordinance expressly provides that at the determination of the period limited by the Ordinance to any person for bringing an action to recover land, the right and title of such person to the said land, for the recovery whereof such action might have been brought within such period, shall be extinguished. In my opinion the expression "action to recover land" in section 18 includes a redemption action.

The plaintiffs having failed to bring their claim to redeem the property within 12 years of the execution of the conveyance of the 24th December, 1953 are now precluded by virtue of the provisions of section 16 of the Limitation Ordinance from bringing any such action and by virtue of section 18 of the said Ordinance, their right and title to the property has been extinguished. Consequently their claim fails and is accordingly dismissed with costs.

Claim dismissed.

Solicitors: *Chung & Co.; R. Ramason.*